

DRAFT MINUTES HEARING OFFICER October 16, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Karen Stovall, Senior Planner
Dalton Guerra, Planner I
Blake Schimke, Planning Tech
Brittainy Nelson, Administrative Assistant I

There were 1 interested citizens present at the study session.

- Staff and Hearing Officer discussed overview of the scheduled cases

REGULAR SESSION 5:00 PM

Present:

There were 4 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Vanessa MacDonald. They stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by October 30, 2018 Year at 3:00 PM, to the Community Development Department.

1. The following was noted:

- **Agenda Item No. 1**

October 2, 2018 Hearing Officer Minutes

Vanessa MacDonald, Hearing Officer, stated that the October 2, 2018 Hearing Officer Minutes had been reviewed and were approved.

2. Request abatement of public nuisance items at the **PADILLA PROPERTY** located at 1978 E. Del Rio Drive. The applicant is the City of Tempe **(CE183428)**.

Michael Glab, Code Inspector, gave the following presentation:

- In violation since June for unregistered vehicles on the property.
- Two notices have been sent to the property owner.
- Two citations were given as well.
- Posted one of the citations to the property.
- No contact has been made.

Ms. MacDonald stated that she did have a chance to drive by the property.

Ms. MacDonald agrees with the assessment of the property.

Ms. MacDonald asked if the property owner or anyone in the public that would like to speak on agenda item number 2.

No show of hands or cards.

Ms. MacDonald approved the 180-day abatement.

3. Request a variance to increase the maximum building heights from 35 feet and 40 feet to 100 feet for **FREEDOM RIO PHASE III and RIO 2100 EAST**, located at 2128 and 2132 East Rio Salado Parkway. The applicant is Berry Riddell, LLC. **(PL180044)**

Karen Stovall, Senior Planner, gave the following presentation:

- Thank you and good evening. My name is Karen Stovall, Senior Planner with the Community Development Department.

(Show zoning map and aerial)

- This Variance request is for the properties located at 2128 and 2132 East Rio Salado Parkway. The north property is zoned GID, and the south property is zoned HID.
- The two sites are located between Rio Salado Parkway and the Red Mountain Freeway, at the curve just south of the Salt River. The 2100 Rio Salado PAD and Freedom Rio Phases I and II are located to the south and west. These developments include hotels and office buildings. To the east are the Red Mountain Freeway and existing industrial uses.

(Show context aerial and site plan)

- The applicant is requesting a Variance to increase the maximum building height from 35' in the GID district and 40' in the HID district to 100' to facilitate the construction of two new four-story office buildings with parking garages.

(Show Freedom Rio Phase III elevations)

- These are the elevations for Freedom Rio Phase III.
- The proposed building height will be 80', taken from the datum point that's used to determine grade. For this site, that is along the future private street that will run along the south property line of this lot.

(Show Rio 2100 East elevations)

- These are the elevations for Rio 2100 East.
- The proposed building height will be 73'-5", using a datum point taken from the top of curb at the midpoint of the front property line of the development along Rio Salado Parkway.
- A neighborhood meeting was not required for this request, and staff has not received any public input.

(Show zoning map and aerial)

- Reviewing the Variance criteria:
 - There are numerous special circumstances applicable to these sites, including approval of a PAD Overlay and variance for adjacent developments to the south and west, the site's location within a redevelopment area and growth area as designated by the General Plan 2040, and its location adjacent to a Brownfield Site. Overall, the private development made possible by approval of this variance request will fulfill multiple goals of the General Plan.
 - The site to the south and west, 2100 Rio Salado, received approval of a PAD allowing a maximum building height of 75'. The site to the west, Freedom Rio Phases I and II, received a Variance to allow a maximum height of 100'. The increased heights permitted for surrounding developments is a special circumstance applicable to the property.
 - The 2040 General Plan identifies this site within the boundaries of the University / Hayden Butte Redevelopment Area and the 101/202 Interchange Growth Area. These areas have goals that include reducing slum and blight, stimulating private investment, attracting new development, and promoting pedestrian, bike, and transit connections within the interchange area.
 - These properties are also adjacent to a Brownfield Site, as identified in the General Plan. The Land Remediation Goal encourages land use actions that promote restoration and efficient use of brownfields. This variance would permit development with compatible intensity as that which has occurred on the Brownfield Site.
- Strict application of the code would limit the building heights to 35' and 40', up to 65' less than what is permitted on adjacent properties. These limitations would result in a dip in the building heights between the curve at the freeway interchange and the developments to the west.
- The requested variance would not grant special privileges inconsistent with the limitations upon properties in the vicinity and same zoning district. As previously stated, Freedom Rio Phases I and II have height limitations of 100', and the proposed development would create buildings with a uniform scale with those to the west.
- None of the special circumstances previously identified were self-imposed by the owners.
- Based on the information submitted by the applicant and review of the Variance criteria, staff recommends approval of the request, subject to the stipulations listed in the staff report.
- I'd be happy to answer any questions.

Ms. MacDonald clarified that the applicant was asking for 73-74 feet, but they are getting 100 feet.

Ms. Stovall stated that is correct.

Ms. MacDonald asked if any of the surroundings buildings have been granted variances as well.

Ms. Stovall clarified that the two buildings adjacent to the 202 to the west and the buildings closest to Rio Salado and the longer building to the west of the PAD.

Ms. MacDonald asked for the applicant to come up and speak.

Ms. Riddell stated that the site was part of the First Street Landfill. Which is part of a much larger landfill and super fill site. This gave condemnation of portions to the site which allowed for construction of Loop 101 & 202 Freeway. It is part of the City's plan. In 2001 city adopted the McClintock Rio Salado Parkway Redevelopment Area which later became the University/ Hayden Butte Redevelopment Area. 2040 General Plan Redevelopment Goals – Encourage reinvestment and redevelopment appropriate to an area but the goal is to maximize the efficiency of land uses within area of stagnation or decline by promoting the greatest economic, social and cultural potential. The growth of the 101/202 interchange was recognized as a great site for tremendous growth and economic opportunity. Back in 2002 the site was subject to a development agreement that ultimately promoted the construction of Tempe Marketplace and as part of that it required quite an effort and significant assemblage to put together what we now see as Tempe Marketplace. Part of the agreement came with the ability to use a GPlat. Construction of the site is the largest brownfield environmental cleanup in Arizona's history. The site is actually bookended between two landfills, there is the First Street Landfill to the west of the property and Clean Concrete Landfill to the east. There are a few things that are impacting the project because they are adjacent to the landfill. The site that is next to the project had to be compacted which is when they take this giant machine out and drop weight on the ground and slide it over and do it again which is how they create the redamation. This has impact on all the property around the redamation as a result. The site was owned by a different owner who had no connectivity to the neighbors where Warrior really stepped in and up for the City of Tempe and create the connectivity. Not only based on freedom I and II but based on working through the development in Tempe. Creating a tremendous opportunity to help create and fulfill all the goal and plans previously mentioned which includes the Brock property to the east. The request is for a variance to permit up to 100 feet in building height, consistent with surrounding entitlements. There are two buildings that have received the 100 feet variance the rest of the marketplace is entitled up to 75 feet the south east is at 40 feet but those will change as well over time. They are asking for 100 feet and the staff has been kind with working to meet the needs. There is a lot of change over the site and they want to make sure that they are entitled with what works. In 2017 Mrs. MacDonald did indicate her hope that approval of this variance would set a precedent for quality future development in the area. Which it has, and this is the type of development that you are able to see in those type of entitlements for example Freedom Phase III is 4 stories, 80 feet. The 80 feet is to the very top of the building.

Ms. MacDonald asked dose the 80 feet include to machinal screening.

Ms. Riddell stated that is correct.

Ms. Riddell continued by saying according to the variance criteria which states that there needs to be a special circumstance or conditions applying to the property, including its size, shape, topography, location, and surroundings. This is proven because bookended by two landfills, and portion on a landfill. Below raised freeway interchange to the north and east of the property. Part of a redevelopment area, and City policies support revitalization. With the confluence of freeways on two sides of the site it is creating a bowl effect which is necessitating the height. The Site topography is 19 feet lower than property to the west. This request will not deprive properties in the same classification. Which is another way of saying that the Hearing Officer is not granting any special privileges. In January 2017 there was a variance for 100 feet in height which was approved for Freedom Phase 1 and II. This is not a self-imposed situation was created. Staff pointed out in the report on page 2 Visually, the existing height restriction would result in a dip between the Red Mountain and Pima Freeways and the higher buildings of 2100 Rio Salado and Freedom Rio Phases I and II. In order to allow building of a scale uniform with those to the west, increased building heights would need to be permitted on the subject sites.

Ms. MacDonald clarified that instead of showing the nice uniform horizon of buildings it would dip.

Ms. Riddell stated that is correct

Ms. Riddell continued by saying that they are not requesting to make any changes in the uses and densities permitted in any zoning classification or zoning district. Only want the same height as what was previously approved. And the foresight of the Hearing Officer was correct because there is a positive economic impact. Freedom Financial did an economic analysis from Freedom I and II which is impressive on what was accomplished in the two phases done so far. This gives reason to be credibly optimistic if this is approved. She is pleased to enjoy the support from

Economic Development. Would like to request a 24-month approval so that she does not have to appear before the hearing officer again.

Ms. MacDonald asked if she would need to change the approval in the staff report. And pointed out there was not a time frame in the report given.

Ms. Riddell stated that what she understood from the Conditions of Ordinance was that it was 12 months if not specified.

Ms. Stovall clarified that the 12 months typically implies to a development plan review not to variances. She also pointed out that the height does not go to the top of the mechanical equipment. Mechanical equipment screening does not count towards building height. The heights are to the top of the structure parapet or any architectural enhancements.

Ms. Riddell stated that from what she understood from the architect was that was the reason that they wanted flexibility from the heights that they were given, and she apologized.

Ms. MacDonald clarified that the height that Ms. Riddell was requesting is enough to complete the project and maintaining the line.

Ms. Riddell stated that is correct.

Ms. MacDonald asked if she has read and agree with the conditions of approval in the staff report.

Ms. Riddell stated yes that would like to have the 100 feet, but staff has been great and providing the buffer as well.

Ms. MacDonald stated that it is a little confusing because the caption for the case reads that the applicant is requesting 100 feet, but they are being condition to 85 feet and 79 feet it seems a little inconsistent. She would be ok with just keeping it at a 100-foot request as noted in the presentation the site has a lot of grade variations and that would give the applicant what they need to be comfortable. The applicant is going through DPR, so the building is not going to just pop up. The Variance would be tied to the building plans that they are going through, so she would recommend removing the stipulation and keeping it at 100 feet.

Ms. MacDonald invited Ben Graff up to speak.

Mr. Graff stated that he has been before hearing officer Ms. MacDonald before to represent his client Tellurian development to the west of the property in question. Tellurian development has been in partnership with Boyer and they are in support of the height wavier. Tellurian Development has been through several PAD and use permits that the hearing officer has approved. The real synergy of the development is finally coming together. He appreciates the supportive comments and would request for approval.

Ms. MacDonald asked if anyone else in the public that would like to speak on agenda item #3.

No show of hands or cards.

Ms. MacDonald stated that when she got the packet on this case she vividly remembered this case especially because it was not that long ago. Which is remarkable all the development that has taken place within the short time span a lot of times projects of this magnitude get approval and either stall for funding or other reasons and it is exciting to see the progress. She also thanked the applicant for reminding her about the remark that she made about the development. When she drives by the site it is nice to see the buildings. It's a nice extension of development on Tempe Town Lake.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Variance Approval Criteria (in italics):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* Ms. MacDonald agrees that special circumstances are applicable to the property mainly the topography difference.
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;*
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;*
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.* Ms. MacDonald does not believe the circumstances were self-imposed by the property owner.

DECISION:

Ms. MacDonald Approved the Variance (VAR180007) to allow increase the permitted building height from 35 ft. and 40 ft. to 100 ft, **FREEDOM RIO PHASE III & RIO 2100 EAST**, located at 2128 and 2132 East Rio Salado Parkway subject to the assigned Conditions of Approval as follows:

1. This Variance is valid only after a Development Plan Review entitlement for the site plan, landscape plan and building elevations have been obtained.
2. This Variance is valid only after a Building Permit has been obtained, the required inspections have been completed and a final inspection has been passed.
3. The building height for Freedom Rio Phase III shall be no greater than 85' (eighty-five feet). The building height for Rio 2100 East shall be no greater than 79' (seventy-nine feet).

4. Request a Use Permit to allow an instructional school for **PHOENIX FENCING ACADEMY**, located at 8350 South Kyrene Road, Suite C-102. The applicant is William L. Becker III. (**PL180254**)

Dalton Guerra, Planner I, gave the following presentation:

- Phoenix Fencing Academy is proposing to operate an instructional school at 8350 South Kyrene Road within the GID, General Industrial District.
- Phoenix Fencing Academy is an instructional school that teaches the sport of fencing to customers ages 7 years and older in individual and group classes.
- Hours of operation are M-F 4pm-10pm with up to 3 employees on hand at any given time.
- To date, staff has not received any public input.
- Based on the information provided by the applicant and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald asked for the applicant William Becker to come up and speak.

Mr. Becker stated that he is the owner of the academy and requesting use permit for the space as listed. He also informed that they are similar to the businesses that are already in the structure itself there is volleyball business three doors down that are operation in the area as well.

Ms. MacDonald asked if he has already read the conditions of approval in the staff report and does he agree with the conditions.

Mr. Becker stated yes.

Ms. MacDonald stated that she does not have any questions. However, she was in Milwaukee this past weekend and there was a huge fencing tournament going on.

Mr. Becker stated that he was there and one of his students won one of the events.

Ms. MacDonald stated that everywhere she went there were students with fencing logos on their shirts. It was interesting to see them all in the same place.

Ms. MacDonald asked if there was a member of the public here that would like to speak on agenda number 4.

No show of hands or cards present.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180094) to allow an instructional school **PHOENIX FENCING ACADEMY**, located at 8350 South Kyrene Road, Suite C-12 subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Any intensification or expansion of use shall require a new Use Permit.
6. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 30 days or by November 15, 2018.

5. Request a Use Permit to allow a boat parked within the required front yard building setback for the **GUERRA RESIDENCE**, located at 1947 East Meadow Drive. The applicant is Jesus Guerra. **(PL180257)**

Dalton Guerra, Planner I, gave the following presentation:

- The Guerra Residence is located on lot 88 of the Alameda Meadows Unit Two Subdivision, south of East Broadway Road and east of South McClintock Drive.
- The applicant is proposing to park a boat in the required front yard building setback. The boat is 24' in length, 8' in width and about 9.5' in height.
- The request is a result of a code violation issued on August 20, 2018 for parking a boat in the required front yard building setback for longer than 48 hours within 7 consecutive days.
- In 2007, the same Use Permit request was made for the exact same boat at 1929 East Meadow Drive. The request was denied by the Hearing Officer but later approved by the City Council through the appeal process.
- To date staff has received two calls in opposition. One concern is the number of vehicles that will be parked at this property and the potential for vehicles being parked on the street or curb as a result. Another concern is poor maintenance of the boat and property.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff cannot support approval of the requested Use Permit.

Ms. MacDonald asked if the violations are complaint driving.

Mr. Guerra stated that he is not sure.

Ms. MacDonald asked if the 8' 6" dimensions is the width.

Mr. Guerra stated that is correct.

Ms. MacDonald asked for the applicant Mr. Jesus Guerra to come up and speak.

Mr. Jesus Guerra stated that this is the first time that he has had a boat and parking. He is not sure if someone complained or not.

Ms. MacDonald asked how long he has the boat at the property.

Mr. Jesus Guerra stated that he has had it at the property two months.

Ms. MacDonald asked if he had an understanding rather or not this was allowed.

Mr. Jesus Guerra stated no this the first time. His neighbor had the boat for twenty years in the same place. He knows that the lady is not well anymore. So, he asked the previous owner if they can sell it to him and the sale takes place. A week after the sale the City informed him that he needs to move it because it is creating violations. He was not aware of asking for the permit.

Ms. MacDonald asked if the boat owner explained all the history in keeping the boat on the property.

Mr. Jesus Guerra stated no and they had it on the property for twenty years. He also asked his neighbors if it bothers them and they said no. He provided the letter of support to Ms. MacDonald.

Ms. MacDonald read into the record the letter as follows "I Conny L Bevel who resides at 1983 E Meadow drive have no issue with the pontoon boat at 1947 E Meadow dr. It is not on the sidewalk in fact it is back up to their garage and it is not blocking anything as it was not blocking anything when it was parked in a driveway three houses down from Mr. Guerra. Thank you, Conny Bevel."

Ms. MacDonald Thanked Mr. Jesus Guerra for bringing the letter it was very helpful.

Ms. MacDonald invited Ms. Ann Till to come up and speak.

Ms. Till stated that she opposes the boat.

Ms. MacDonald asked where she lives regarding the boat now.

Ms. Till stated that she is two houses west of Mr. Jesus Guerra home. And she was the direct neighbor to the previous boat location. She hates to have to oppose because her neighbor is a good neighbor. She originally was ok with the boat being in the area because the previous owner took care of the house and figured she would be the same way with the boat. However, the previous owner did not take care of the boat. Her cat lived in the boat. She was very happy that the boat was being sold only to find out that it was floating down the street. She is not able to support the boat because she lived next to it for so long and she thought it was ok with it, but she is not. Also, the boat is parked in the driveway and there is not enough room for the other cars to be parked in the driveway because of the boat. She believes that Mr. Jesus Guerra is a good neighbor, but the boat has become a nuisance over the years.

Ms. MacDonald invited up Ellie Tiene to speak.

Ms. Tiene stated that she is in opposition to a boat being parked out front. For the points mentioned before there could be animals living in it. The cars that are parked out on the street. The boat is also an eye sore. If this was to set a precedence for people to put a boat out in front of their house what is stop more people to buy a boat and put it in their front yard and block more parking. She lives in Tempe because the streets look beautiful and if there are boats in front of the houses then it does not look good.

Ms. MacDonald asked if there was anyone else in the public that would like to speak on agenda item number 5.

Ms. MacDonald invited Mr. Jesus Guerra back up.

Mr. Jesus Guerra said that he is surprised that they are not there to support him. One of the ladies lives two blocks behind his house. Walking around the neighborhood there are a lot of mobile homes around there on the other side of the park there are huge trailers there are also some nasty yards. He keeps his home well-groomed and walk around the neighborhood with his dog in which he feels like a security guard where he can watch the block.

Ms. MacDonald stated that she was on the Development Review Commission when the original use permit for the boat was asked and in the minutes for that hearing she was against giving the use permit for that time. She didn't believe that the driveway was big enough the boat. It ended up being overturned by the City Council. But never the less my inclination at the time was that this neighborhood and the streets where not appropriate for a vehicle this large. More over even with the Messer property it is the best property on the street given the amount of landscaping and tree cover because it was screened from view. However, at Mr. Jesus Guerra home the boat size is magnified. Something that the staff has not pointed out is that the boat is removing one of the required parking spaces. A home like this is required to have two onsite parking spaces within the drive way you cannot have street parking be part of your required parking. The boat is not only encroaching the setback, but it is removing one of the required spaces which is allowed by the code.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic;* Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic. However, it will lead to increase parking on the street.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;* Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan;* Ms. MacDonald did believe that this could lead to the deterioration of the aesthetics to the neighborhood
4. *Compatibility with existing surrounding structures and uses;* Ms. MacDonald does not believe that the boat would be compatible with existing structures. She also noted that other large vehicles should be cleaned as well.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public;* Ms. MacDonald does not believe that this applies to the boat.

DECISION:

Ms. MacDonald denied the Use Permit contained in (PL180257) to allow a boat parked within the required front yard building setback for the **GUERRA RESIDENCE**, located at 1947 East Meadow Drive.

-
6. Request a Use Permit Standard to reduce the required rear setback from 15' to 12' (up to 20%) for the **HOWARD RESIDENCE**, located at 130 East Duke Drive. The applicant is Tessa Jones-Dailey of The Phactory. (PL180260)

Blake Schimke, Planning Tech, gave the following presentation:

- The Howard Residence is Positioned on lot 690 of the University Royal 2 Subdivision located east of South Mill Avenue and south of East Baseline Road within the R1-6, Single Family Zoning District.
- The applicant, Tessa Jones-Dailey is requesting a Use Permit Standard to reduce the required rear yard setback by 20%. This will result in a reduction in the setback standard by 3 feet (3'-0"), thus going from 15'-0" to 28'-0". The proposed addition will encroach 1'-4" into the required 15'-0" rear yard setback.
- The applicant is proposing a 500 sq. ft. home addition which will provide a new office as well as new closet and storage spaces for the homeowners.
- To date, there has been no public input on the proposed project.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports approval of the requested Use Permit Standard and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald stated that she would like to point out the lot is not the standard rectangle lot. She clarified that the use permit will not be for the enter back yard area.

Mr. Schimke stated that is correct it will encroach about 1 foot and 4 inches into the required set back. The use permit standard would allow them an extra three feet of grace. But as far as the city plans show it will only encroach by 1 foot and 4 inches.

Ms. MacDonald invited the applicant Ms. Tessa Jones-Dailey up to speak.

Ms. Jones-Dailey stated that she is representing the home owners who is requesting the 20% reduction and one thing that she would like point is that directly behind the property are all businesses two story buildings and directly to the east are the neighbors that called in support. The owners have lived in the property for 30 years and they are very invested in the neighborhood. The property directly to the west is for sale. If this was a regular lot they would not have to ask for the reduction.

Ms. MacDonald asked if she has read the conditions of approval and if she agrees.

Ms. Jones-Dailey stated that she has read them, and she agrees.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures. She also noted that other similar projects have taken place in the neighborhood setting a precedent.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

DECISION:

Ms. MacDonald Approved the Use Permit (ZUP180096) to reduce the required rear setback from 15' to 12' (up to 20%) for the **HOWARD RESIDENCE**, located at 130 East Duke Drive, subject to the assigned Conditions of Approval as follows:

1. The Use Permit Standard is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit Standard is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

ANNOUNCEMENTS

- Vanessa MacDonald noted that the next Hearing Officer public hearing is scheduled for Tuesday, November 6, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:56 PM.

Prepared by: Brittainy Nelson
Reviewed by:

Steve Abrahamson, Principal Planner
For Vanessa MacDonald, Hearing Officer

SA: bn